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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/800,547 | 03/07/2001 | Aurelia Maza | 06640-148 US | 4160 |

7590 12/22/2005

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EXAMINER

PADEN, CAROLYN A

| ART UNIT | PAPER NUMBER |
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1761

DATE MAILED: 12/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------------------|------------------------------------|--|
| Office Action Summary | Application No. 09/800,547 | Applicant(s) MAZA ET AL. | |
| | Examiner Carolyn A. Paden | Art Unit 1761 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 27, 2005 has been entered.

Claim 29 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification, as a whole does not set forth a dressing or mayonnaise composition that is free of starch.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trainor (4,423,084) in view of Ross (5,632,596) and for the reasons set forth by the Board of Appeals in their decision of September 30, 2004 and for the reasons of record.

Trainor discloses making salad dressing. Table 1 and example 1 shows ingredients that include starch, acidulant, egg, oil, water and sweetener. These ingredients are mixed together and then processed in a colloid mill that includes a rotor and a stator. The claims appear to differ from the reference in the suggestion of the specific apparatus features of the colloid mill. Trainor is silent as to the measurements of the rotor and stator, but Ross provides the specific apparatus features of the rotor and stator. Ross teaches the use of the rotor and stator that is known for use in the manufacture foods and emulsions (column 1, lines 5-14). It would have been obvious at the time the invention was made to utilize the rotor and stator or Ross in an edible emulsion, which is a spoonable dressing. Further it would have been obvious to prepare a pre-emulsion prior to emulsifying the food product in order to assist in providing for a uniform final product. Thus in this case applicant is merely utilizing a known colloid mill that has the rotor and stator of the claims, in a known process for

making an emulsified dressing. Applicant has amended the claims to clarify that the motor speed is adjustable. No unobvious or unexpected results are seen from the recitation of the manipulation of the motor speed. This is an apparatus limitation, carrying no weight in these process claims. Applicant has further amended the claims to indicate that the mayonnaise and salad dressing are made in the same production line. No unobvious or unexpected results are seen from the use of one production line for mayonnaise and salad dressing. Efficient use of factory space would be expected from successful food processor.

With regard to claim 28, no unobvious or unexpected difference is seen between the product resulting from the present process and the product resulting from the claim.

Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Akashe (6,235,336) in view of Ross (5,632,596).

Akashe discloses using salted egg yolks to make an emulsion in a device with a rotor/stator shear device. The ingredients in the product are shown in the first Table in column 6. The claims appear to differ from Akashe in the suggestion of the specific apparatus features of the shear device. Ross teaches the use of the rotor and stator that is known for use


in the manufacture foods and emulsions (column 1, lines 5-14). It would have been obvious at the time the invention was made to utilize the rotor and stator or Ross in an edible emulsion that does not contain starch. Further it would have been obvious to prepare a pre-emulsion prior to emulsifying the food product in order to assist in providing for a uniform final product. Thus in this case applicant is merely utilizing a known colloid mill that has the rotor and stator of the claims, in a known process for making an emulsified mayonnaise. Applicant has amended the claims to clarify that the motor speed is adjustable. No unobvious or unexpected results are seen from the recitation of the manipulation of the motor speed. This is an apparatus limitation, carrying no weight in these process claims. Applicant has further amended the claims to indicate that the mayonnaise and salad dressing are made in the same production line. No unobvious or unexpected results are seen from the use of one production line for mayonnaise and salad dressing. Efficient use of factory space would be expected from successful food processor.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone

number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398 or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CAROLYN PADEN 12-30-05
PRIMARY EXAMINER 1761